IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

S.T.Rev..No.223 of 2007

(AGAINST THE ORDER IN T.A.NO.83/2005 DATED 28.02.2007 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOZHIKODE)

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REVISION PETITIONER/APPELLANT:-

A.T.ESSAKUNHI, PWD CONTRACTOR,
CHERUTHAZHAM, P.O. PILATHARA, KANNUR DISTRICT.

BY ADV. SRI.RAJESH NAMBIAR.

RESPONDENT/RESPONDENT:-

THE STATE OF KERALA.

BY SENIOR GOVERNMENT PLEADER SRI.MOHAMMED RAFEEQUE.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 03/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

H.L.Dattu,C.J. & K.T. Sankaran,J.

S.T.Rev.No.223 of 2007

Dated, this the 3rd day of July, 2007

ORDER

H.L.Dattu,C.J.

For the assessment year 1995-96 the assessing authority had quantified the tax liability of the assessee by passing an order of assessment dated 30.08.1999. According to the assessee, at the time of assessment he had produced the books of accounts maintained during the regular course of business. Further, according to the assessee, after going through the records, namely, the books of accounts, statement of accounts etc., the assessing authority had prepared a check note.

2. The assessing authority had completed the assessments accepting the returns filed by the assessee.

3. The revisional authority in exercise of its powers under section 35 of the Act had initiated *suo motu* revisional proceedings on the ground that the assessing authority should not have completed the assessment and should not have granted the exemptions claimed by the assessee in the absence of books of accounts produced by the assessee.

4. The revisional authority thereafter had set aside the orders passed by the assessing authority and had remanded the

matter to the assessing authority to re-do the matter in accordance with law. After such remand, the assessing authority had passed an order dated 02.09.2003 and in that had proceeded to complete the best judgment assessment.

5. Aggrieved by the said order passed by the assessing authority the assessee had carried the matter by way of first appeal before the appellate authority and second appeal before the Tribunal. He was unsuccessful before both the authorities. That is how the assessee is before us in this revision petition.

6. The assessee has framed the following questions of law for our consideration and decision. They are as under:

> "I. Whether the order of the Sales tax Appellate Tribunal is correct on law, facts and circumstances of the case?
>
> II. The day book, ledger, statement of account and the certificates from the awarders were admittedly produced by the assessee at the time of the completing the original assessment order. They were not returned to the petitioner after completion of the proceedings. No evidence is produced to show that the said records were returned to the assessee. Burden is on the assessing authority to prove by acknowledgment of the assessee that the documents admittedly produced before the assessing authority were in fact returned to the assessee after completion of the original assessment proceedings. Thus

whether the best judgment assessment made solely for the reason that book of accounts were not produced again sustainable in law in absence of any evidence to show that the book of accounts had in fact been returned to the assessee after completion of the original assessment proceedings?

III. Has the tribunal erred in law in not directing the assessing authority to verify the check notes prepared on the basis of the book of accounts produced at the time of completion of the original assessment and to re do the assessment on the basis of the entries therein?

IV. The Deputy Commission had set aside the Annexure A assessment on the ground that the assessment completed is irregular and without proper enquiry. The deductions allowed by the assessing authority were found to be irregular by the Deputy Commissioner. In Annexure B order itself it is stated that "the assessment completed under Section 5(1)(iv) by the assessing authority is irregular as the contractor himself has stated that he has not maintained proper book of accounts for the above years and as such the book of accounts produced appears to be incorrect and incomplete". Thus the Deputy Commissioner in Annexure B order had only expressed an opinion and not rendered any specific finding that the book of accounts produced are incorrect as wrongly interpreted by the tribunal. Therefore has not the Tribunal erred on facts and on law in stating that since there is a specific finding by the Deputy Commissioner that the accounts

produced before the assessing authority are incorrect and incomplete and therefore a direction to re-do the assessment on the basis of the check notes prepared cannot be allowed?

7. Learned counsel appearing for the assessee would contend that at the time of quantification of the tax liability for the first time by the assessing authority he had produced all the books maintained by him in the regular course of business. Therefore, the assessing authority by its subsequent order dated 2.9.2003 should not have observed in its order that the assessee had failed to produce the books of accounts. It is further contended by the learned counsel for the appellant that with the help of the cheque slips that were available, the assessing authority should have completed the assessment and should have granted certain benefits claimed by the assessee in his annual returns.

8. The assessing authority, the first appellate authority and the Tribunal have come to the conclusion that for the assessment year in question the assessee had not produced any books of accounts before the assessing authority. Whatever that was produced was also defective and the books of accounts were returned to the assessee.

9. In fact, even before the assessing authority and the revisional authority, the assessee had stated that he had not maintained proper books of accounts with respect to the assessment year in question.

10. In our opinion, since the assessee did not produce the books of accounts maintained by him during the regular course of business, the assessing authority had no other alternative but to proceed and complete the best judgment assessment. The order so passed is confirmed by the first appellate authority as well as by the Tribunal. We do not see any error in those orders. Therefore, interference of those orders is not called for in this revision petition. Accordingly, this revision petition is rejected and the questions of law framed by the assessee are answered in the negative and in favour of the revenue. Ordered accordingly.

H.L. Dattu
Chief Justice

K.T. Sankaran
Judge

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